APPENDIX A

MEMORANDUM OPINION-AND-JUDGMENT

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois
November 2, 1966
Before
Hon. ELMER J. SCHNACKENBERG
Hon. WIN G. KNOCH
Hon. LUTHER M. SWYGERT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 15776 vs.
DARRELL D. MACINTYRE,
a/k/a DARRELL D. MCINTYRE,
Defendant-Appellant.

The defendant appeals from a denial of his motion under Rule 35 of the Federal Rules of Criminal Procedure for probation or a reduction of sentence. We are not authorized to reduce or modify a sentence or order the trial court to do so under the circumstances of this case. *Bryson* v. *United States,* 265 F. 2d 9 (9th Cir.), *cert. denied,* 360 U.S. 919 (1959); *United States* v. *DeMarie,* 261 F. 2d 477 (7th Cir. 1958).

The record of the district court shows that by its order of May 16, 1966, the court not only refused to reduce or change the sentence imposed on defendant but also denied his motion that he be placed on probation. Cf. *United States* v. *Wiley,* 278 F. 2d 500 (1960); *United States* v. *Wiley,* 267 F. 2d 453 (1959), where we reversed the court below for refusing to entertain or rule on an application for probation because of a standing policy in that court that once a defendant stands trial, rather than pleads guilty, probation would not be considered by the court.

The appeal is dismissed.

APPENDIX B

ORDER DENYING REHEARING IN BANC

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Wednesday, December 7, 1966

Before

Hon. JOHN S. HASTINGS, Chief Judge
Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. WALTER J. CUMMINGS, JR., Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. DARRELL D. MACINTYRE, *Defendant-Appellant.*	Appeal from the United States District Court for the Western District of Wisconsin.

No. 15776

IT IS ORDERED by the Court that the petition for a rehearing *en banc* of this cause be, and the same is hereby DENIED.

APPENDIX C

ORDER DENYING PROSECUTION'S MOTION TO DISMISS APPEAL

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Thursday, July 14, 1966

Before

Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* No. 15776 vs. DARRELL D. MACINTYRE, *Defendant-Appellant.*	Appeal from the United States District Court for the Western District of Wisconsin.

There has been received in the office of the Clerk of this Court a certified record transmitted from the United States District Court for the Western District of Wisconsin. There has also been tendered to the Clerk of this Court a motion by the United States of America

"1. To dismiss the appeal of the appellant, Darrel D. MacIntyre, also known as Darrell D. McIntyre, from his judgment of conviction and sentence since it is untimely and the Court of Appeals has no jurisdiction in the matter;

"2. To dismiss the entire appeal as frivolous, without merit, and as outside the jurisdiction of this Court;

"3. To docket and decide this matter without hearing, pursuant to Rule 22, Rules of the Seventh Circuit Court of Appeals, as soon as is practicable;"

with brief on behalf of the United States of America and brief on behalf of defendant-appellant.

On consideration of all of the above documents, IT IS HEREBY ORDERED that the appeal of the defendant-appellant from the order of the United States District Court for the Western District of Wisconsin entered therein on May 16, 1966 *only*, be docketed in this Court instanter.